

1 **ELECTION ASSISTANCE COMMISSION**

2 **(Notice 2007 - 42)**

3 **Consideration of Administrative Transfer of**  
4 **National Voter Registration Act Regulations**

5 **AGENCY:** Election Assistance Commission.

6 **ACTION:** Notice: Request for Public Comment.

7 **SUMMARY:** The Help America Vote Act of 2002 (Pub. L. 107-  
8 252, 116 Stat. 1727, 42 U.S.C. 15532) transferred authority to  
9 promulgate regulations under the National Voter Registration Act  
10 of 1993 (NVRA) (Pub. L. 93-31, 197 Stat. 77, 42 U.S.C. 1973gg-1  
11 et seq., at 42 U.S.C. 1973gg-7(a)) from the Federal Election  
12 Commission (FEC) to the Election Assistance Commission (EAC).  
13 The EAC is presently considering the administrative transfer of  
14 NVRA regulations previously adopted and maintained by the FEC.  
15 These regulations are currently located at 11 C.F.R. 8. In  
16 accordance with the Administrative Procedures Act (APA), this  
17 administrative transfer of the regulations would make no  
18 substantive changes to the FEC regulations and would be made  
19 without public comment. The only changes made would be  
20 technical, such as the address and contact information for the  
21 responsible agency. Following this administrative transfer of the  
22 regulations, the EAC would begin efforts to substantively amend  
23 the rules. This rulemaking process would include substantial

1 public involvement, including public notice and comment pursuant  
2 to the APA. The EAC currently seeks public comment on whether  
3 the agency should administratively transfer regulations previously  
4 adopted and maintained by the FEC regarding the NVRA,  
5 currently located at 11 C.F.R. 8, and then substantively amend  
6 those rules. Please note that the EAC does not seek substantive  
7 comment on the content of the existing regulations or potential  
8 modifications to the regulations.

9 **DATES:** Comments must be received on or before 4:00 pm on Monday,  
10 December 3, 2007.

11 **ADDRESSES:** Comments must be submitted in either electronic or written form.  
12 Comments may be submitted online at [www.eac.gov](http://www.eac.gov).  
13 Commenters are encouraged to submit comments electronically to  
14 ensure timely receipt and consideration. Written comments should  
15 be sent to: NVRA Comments, Election Administration Support  
16 Division, U.S. Election Assistance Commission, 1225 New York  
17 Ave. NW, Suite 1100, Washington, DC 20005.

18 **FOR FURTHER**  
19 **INFORMATION**  
20 **CONTACT:**

Mr. Edgardo Cortés, Election Research Specialist, (202) 566-3100  
or toll-free (866) 747-1471.

22 **SUPPLEMENTARY**  
23 **INFORMATION:**

The National Voter Registration Act of 1993 (NVRA), Pub. L. 93-  
31, 197 Stat. 77, 42 U.S.C. 1973gg-1 et seq., at 42 U.S.C. 1973gg-  
7(a) required the Federal Election Commission (FEC) to issue

1 regulations to develop a national mail voter registration form for  
2 elections to Federal office, and to submit to Congress no later than  
3 June 30 of each odd-numbered year (beginning June 30, 1995) a  
4 report that assesses the impact of the NVRA and recommends  
5 improvements in Federal and State procedures, forms, and other  
6 matters affected by the NVRA. The FEC published an Advance  
7 Notice of Proposed Rulemaking in connection with the NVRA  
8 rulemaking on September 30, 1993 (58 FR 51132), and a Notice of  
9 Proposed Rulemaking on March 10, 1994 (59 FR 11211).  
10 Following a public notice and comment rulemaking, the FEC  
11 issued rules implementing these requirements on June 23, 1994.  
12 59 FR 32323.

13 Section 802 of the Help America Vote Act of 2002  
14 (HAVA), Pub. L. 107-252, 116 Stat. 1727, 42 U.S.C. 15532,  
15 transferred the FEC's responsibilities under the NVRA to the  
16 Election Assistance Commission (EAC) but it did not transfer the  
17 FEC's previously adopted regulations. In order to carry out the  
18 functions listed in Section 9(a) of the NVRA [42 U.S.C. 1973gg-  
19 7(a)], the EAC must promulgate regulations. The EAC currently  
20 seeks public comment on whether the agency should  
21 administratively transfer regulations previously adopted and  
22 maintained by the FEC regarding the NVRA. The administrative  
23 transfer would move the existing FEC regulations (11 C.F.R. 8) to

1 the EAC's Code of Federal Regulations site and only make  
2 technical changes to the mailing address and contact information  
3 for the agency. EAC believes that good cause exists for adopting  
4 the FEC rules as final EAC rules without public notice and  
5 comment under 5 U.S.C. 553 because this rule only reflects an  
6 administrative transfer of functions required by HAVA. No  
7 substantive changes will be made to the rules, which have already  
8 been subject to public notice and comment. Similarly, because this  
9 final rule is a recodification of existing regulations, it would not be  
10 subject to the effective date limitation of 5 U.S.C. 553(d). After  
11 the proposed administrative transfer of the regulations, the EAC  
12 would take steps to substantively amend the rules, which would  
13 significantly involve the public and include an opportunity for  
14 public notice and comment pursuant to the Administrative  
15 Procedures Act (APA).

16 Again, the EAC is seeking comment on its proposed plan to  
17 first administratively transfer and then substantively amend the  
18 NVRA rules located at 11 C.F.R. 8. At this time, the EAC does  
19 not seek comment on the substance of the regulations. As such,  
20 this notice and request for public comment is not required by or  
21 made pursuant to the APA.

22 After review of the public comments received pursuant to  
23 this notice, the EAC will decide whether to administratively

1 transfer the regulations and then substantively modify them, as  
2 described above. If this process is not adopted, the EAC will  
3 alternatively initiate a rule making process under 5 U.S.C. 553  
4 independent of the FEC rules. In either scenario, EAC will follow  
5 all the rulemaking requirements of the APA, which allows for  
6 extensive public comment and transparency in the regulatory  
7 process.

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12 Thomas R. Wilkey  
13 Executive Director  
14 U.S. Election Assistance Commission  
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16 BILLING CODE: 6820-KF  
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